IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos 247 & 248 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

GITABEN MAGANBHAI DHOLKIA

Appearance:

Mr.M.A.Bukhari, learned AGP for Petitioners

MR BD KARIA for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 03/05/2002

COMMON ORAL JUDGEMENT

1. As per order passed by my brother justice S.D.Dave on 5.3.2002, the court has issued rule, which was made returnable on 28.3.2002 and granted interim relief as prayed for by granting prayer clause para 13E and the petitioner - State was directed to deposit cost of Rs.10,000/-- in each case on or before 5.4.2002. Mr.

Bukhari, learned AGP, appearing for the petitioners has produced the letter for my perusal to show that the office of the Government Pleader has, as per direction given in the order, in each matter deposited Rs.10,000/-by way of cheque and he has also produced receipt of the Nazir Department of the High Court dated 10.4.2002.

2. During hearing Mr.Bukhari, learned AGP appearing for the petitioner State, has taken me through the orders as well as the Applications for condonation of delay filed by the petitioner - State before the appellate court and submitted that it is true that when the petitioners-defendants have challenged the judgment and decree of the trial court, there is a long delay and accordingly Applications for condonation of delay were submitted by explaining the cause for delay and further that, as according to him, even after the decree was passed, file is required to be processed from one department to another and ultimately the decision was taken to challenge the decree by preferring Appeal and according to him the appellate court ought to have while condoning the delay imposed cost for such delay and the court ought to have examined the merits of the challenge in Appeals. He accordingly submitted that as per the order passed by this court on 5.3.2002, the petitioners have deposited with this court a cheque of Rs.10,000/-in each matter and while disposing of these Revision Applications, the same may be paid to the respective respondents by way of costs and the opportunity be given to the petitioners defendants for hearing of the Appeals on merits and the appellate court may examine the decree under challenge on merits.

3. As found from the judgments of the trial court, the respondents - plaintiffs have filed Suits for seeking declaration and permanent injunction and after hearing the said Suits and considering the evidence, the learned trial Judge has held that the plaintiffs have proved that the plaintiffs are in continuous service and are entitled to the status of post of cook and the plaintiffs are entitled to hold that post according to law. However, the learned trial Judge has held that the order passed by the Deputy Director, Bharatiya Tabibi Homeopathy System dated 27.10.89 was legal. The learned trial Judge has decreed the suits partly in favour of the plaintiffs.

4. The petitioners - original defendants have preferred respective Appeals before the appellate court challenging the decree passed by the learned trial Judge

on 26.2.99 in respective Suits being Regular Civil Suit Nos.281 and 282 of 1989 filed by the respective plaintiffs and as the said Appeals were filed beyond the period of limitation, the appellate court has while deciding the Applications for condonation of delay held that no sufficient cause is shown and accordingly appellate court has rejected the Applications for delay.

5. Mr. Karia, learned advocate appearing for the respondents - plaintiffs, has vehemently urged that in view of the reasoned order passed by the appellate court, wherein the appellate court has not accepted the case for condonation of delay and when the decree was passed in favour of the plaintiffs, the authority was required to comply with the said decree in view of the reliefs granted in favour of the plaintiffs and considering the provisions of the Limitation Act, once the appellate court has held that no sufficient cause is shown for delay, this court will not exercise my revisional jurisdiction by setting aside that order. There is force in the contention raised by Mr. Karia. Once the appellate court has, while considering the application for condonation of delay, held that no sufficient cause is shown for condonation of delay, this court is not required to condone the delay in filing the Appeals. As found from the observations, there is a delay of 1011 days in filing the respective Appeals before the appellate court.

6. Considering the submissions made before me and without expressing anything on the contentions raised before me and without expressing anything on the reasoning of the appellate court, wherein the appellate court has rejected the applications for condonation of delay by holding that the Applications of the petitioners - defendants were filed beyond the period of limitation, when the court has as per order dated 5.3.2002 issued rule by directing the petitioners to deposit a sum of Rs.10,000/-- each with this court and in turn the petitioners have already deposited the said amount in respective Revision Applications, this court is of the view that while disposing of these Revision Applications, not as a precedent, the amount deposited by the petitioners defendants be treated as cost to be paid to the respective plaintiffs and accordingly without expressing anything on the contentions, it will be in the fitness of things to allow these Revision Applications by directing the appellate court to treat the Appeals as within time and the same be examined on merits and be decided by 31.3.2003. Interim relief granted earlier in respect of stay of the execution is ordered to continue

and it is directed that applications for stay filed by the petitioners, which are pending, be examined on merits and decide the same in accordance with law. If such Applications are not filed, time to file such Applications is granted upto 17.6.2002 and the appellate court shall examine the same in accordance with law, without being influenced by the fact that the execution was stayed by this court during the pendency of these proceedings and the appellate court shall decide the same on or before 31.7.2002. Accordingly the impugned orders are set aside and Rule is made absolute in each Revision Application, with no order as to costs.

(D.K.Trivedi,J)

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